

SENATE RECORD VOTE ANALYSIS

104th Congress
1st Session

Vote No. 141

May 2, 1995, 12:14 p.m.
Page S-5940 Temp. Record

PRODUCT LIABILITY/\$500,000 Medical Compensatory Cap

SUBJECT: Product Liability Fairness Act . . . H.R. 956. Rockefeller motion to table the Kyl amendment No. 611 to the McConnell amendment No. 603 to the Gorton substitute amendment No. 596.

ACTION: MOTION TO TABLE AGREED TO, 56-44

SYNOPSIS: As passed by the House, H.R. 956, the Product Liability Fairness Act, will establish uniform Federal and State civil litigation standards for product liability cases and other civil cases, including medical malpractice actions.

The Gorton substitute amendment would apply only to Federal and State civil product liability cases. It would abolish the doctrine of joint liability for noneconomic damages, would create a consistent standard for the award of punitive damages, and would limit punitive damages.

The McConnell amendment, as amended, would reform Federal and State medical malpractice laws by eliminating joint liability for noneconomic and punitive damages, capping punitive damage awards at 2 times the sum of economic and noneconomic losses (see vote No. 139), creating a 2-year statute of limitations starting from the time of discovery of an injury, allowing for periodic payment of awards over \$100,000, requiring the reduction of awards by the amount of compensation received from collateral sources, limiting attorney contingency fees to of the first \$150,000 recovered and of any additional amount recovered, and encouraging States to adopt alternative dispute resolution mechanisms.

The Kyl amendment would limit the amount that may be awarded to a claimant for noneconomic losses in a medical malpractice case to \$500,000. The trier of fact in a medical malpractice case would not be informed of this limit. Any award in excess of this limitation for noneconomic losses would be reduced to \$500,000. Awards for future noneconomic losses would not be discounted to present value (i.e., if the court determined that there would be a \$100,000 loss for pain and suffering in a later year, \$100,000 would be awarded now, even though that money could be invested and result in far more than \$100,000 by that future year).

Debate was limited by unanimous consent. Following debate, Senator Rockefeller moved to table the amendment. Generally, those favoring the motion to table opposed the amendment; those opposing the motion to table favored the amendment.

(See other side)

YEAS (56)			NAYS (44)			NOT VOTING (0)	
Republicans (13 or 24%)	Democrats (43 or 93%)		Republicans (41 or 76%)	Democrats (3 or 7%)		Republicans (0)	Democrats (0)
Bond	Akaka	Inouye	Abraham	Hatfield	Baucus		
Cohen	Biden	Johnston	Ashcroft	Helms	Exon		
D'Amato	Bingaman	Kennedy	Bennett	Hutchison	Pell		
DeWine	Boxer	Kerrey	Brown	Inhofe			
Gorton	Bradley	Kerry	Burns	Kassebaum			
Jeffords	Breaux	Kohl	Campbell	Kempthorne			
McConnell	Bryan	Lautenberg	Chafee	Kyl			
Packwood	Bumpers	Leahy	Coats	Lott			
Pressler	Byrd	Levin	Cochran	Lugar			
Shelby	Conrad	Lieberman	Coverdell	Mack			
Simpson	Daschle	Mikulski	Craig	McCain			
Specter	Dodd	Moseley-Braun	Dole	Murkowski			
Thompson	Dorgan	Moynihan	Domenici	Nickles			
	Feingold	Murray	Faircloth	Roth			
	Feinstein	Nunn	Frist	Santorum			
	Ford	Pryor	Gramm	Smith			
	Glenn	Reid	Grams	Snowe			
	Graham	Robb	Grassley	Stevens			
	Harkin	Rockefeller	Gregg	Thomas			
	Heflin	Sarbanes	Hatch	Thurmond			
	Hollings	Simon		Warner			
		Wellstone					

EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

Those favoring the motion to table contended:

The Kyl amendment would limit the amount that can be awarded for noneconomic damages in medical malpractice cases to \$500,000. The argument has been made that the danger of enormous damage awards has caused the huge rise in malpractice insurance and the concomitant drop in practitioners in specific medical fields such as OB/GYN, particularly in rural areas. We suspect this argument may be valid, but our colleagues have not proven their case. No evidence has been presented that proves a causal link, or that proves enacting a cap would increase the number of rural health care providers. While the benefits of this amendment have not been proven, we do know that it would have two definite, negative results. First, it would prevent the award of noneconomic damages in excess of \$500,000, even if they were warranted. Our colleagues have informed us that only 2 percent of noneconomic loss awards in medical cases exceed this amount. This percentage indicates to us that juries have been responsible. We find it ironic that some Senators who have been elected by the citizens of this country say those same citizens cannot be trusted to sit on juries and determine the appropriate amount to award. Our second objection is that this amendment would override each State's right to determine for itself if it will limit the size of noneconomic damage awards. In summary, the negative effects of this amendment are certain, and the benefits are questionable. We therefore support the motion to table.

Those opposing the motion to table contended:

Every day in America physicians take care of over 9 million patients. These physicians are professionals who are dedicated to the service of their fellow Americans. They do everything possible to ensure that they are in conformance at all times with both Government rules and regulations and with the high standards that are inherent in the profession itself. Doctors, though, make mistakes, and patients suffer injuries. Patients who are injured deserve to be fully and fairly compensated. Doctors, for their part, should not be sued for injuries they have not caused, and they should not be forced to pay more than the cost of the injuries.

Unfortunately, under the current tort laws in most States, unjustified medical malpractice suits are the norm, and awards, particularly for noneconomic losses, are at times far in excess of the actual losses incurred. In today's litigious climate, one-third of all physicians, 50 percent of all surgeons, and 75 percent of all obstetricians will be sued in their careers. Roughly three-quarters of all medical malpractice suits are dismissed as meritless, but usually not until physicians have first had to go through the psychological and financial costs of defending themselves before a court. Even this number underestimates the amount of meritless suits that are filed, because physicians are often pressured by their insurance companies to settle meritless cases out of court rather than risk having to pay enormous awards for noneconomic losses. Such losses, for pain and suffering, emotional distress, and related intangible injuries are the driving force behind the rise in medical malpractice insurance costs.

Compensation for economic losses, such as medical bills and lost wages, is not an issue. The problem in this country is that juries will at times award enormous sums for noneconomic losses. In most cases juries are reasonable, but in 2 percent of cases more than \$500,000 is awarded. This extra half a million dollars is in addition to awards for compensatory losses. These rogue verdicts force doctors to practice unnecessary, and expensive, "defensive" medicine, and in many cases have driven up insurance costs to the point that many physicians are abandoning their practices, particularly those whose practices are in fields that are subject to more suits. For example, according to a book published by the respected Institute of Medicine entitled "Medical Professional Liability and the Delivery of Obstetrical Care," 12.3 percent of the OB/GYN's in this country have given up obstetrics totally due to liability pressures. In rural and inner city areas the problem is more extreme because of their higher liability costs.

Some Senators have argued that we should accept the judgment of any jury that wishes to award a multi-million dollar judgment for pain and suffering. Their reasoning is they do not see how a specific award can be denied when the jury sees the victim before them and believes the award is justified. We ask our colleagues how they can abandon all the unseen victims. If the price of allowing the subjective judgment that a person has suffered \$1 million or \$10 million or another amount of pain is that thousands of women will not receive obstetrical care, is it worth it? The answer, of course, is no. Since we cannot know precisely how much pain and suffering should be compensated, we ought to set a cap at a level that is adequate to compensate an egregious case but that is not so high that the rest of society will pay a high cost in the loss of medical services.

California's experience with a medical malpractice cap on noneconomic damages shows that the concept works. In 1992, the year its \$250,000 cap went into effect, California had the highest medical malpractice liability insurance rates in the country. Its rates now are only one-third to one-half the rates charged in States that do not have caps. This cap has not in any way precluded the right of Californians to sue, and medical malpractice suits have in fact increased. We are not applauding this litigiousness; we are instead pointing out that the presence of the cap stopped the explosion in liability costs that have been driving so many doctors out of business.

Unbiased observers, including the Physician Payment Review Commission (which is the Federal Commission established to review Medicare payments) and the Office of Technology Assessment (OTA), have studied this problem and have concluded that eliminating the possibility of unreasonably high rewards for noneconomic damages would effectively reduce malpractice premiums. If we were to enact this reform, better health care for all Americans would result. The Kyl amendment, though it would set a very high limit, would greatly improve the availability and cost of health care services. It therefore deserves our emphatic approval.

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